

Public Agenda Item: **Yes**

Title: **Licensing Act 2003 Statement of Licensing Policy 2021 – 2026**

Wards Affected: **All**

To: **Licensing Committee** On: **28th August 2020**

Key Decision: **No**

Change to Budget: **No** Change to Policy Framework: **Yes**

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1. What we are trying to achieve

- 1.1 In accordance with Section 5 of the Licensing Act 2003 (the Act), Torbay Council (the Council) is required every 5 years, to review and republish its Statement of Licensing Policy (the Policy). The current Policy was published on 7th January 2016 and therefore, it must be reviewed and re-published, on or before 6th January 2021.
- 1.2 This report introduces the proposed revision to the Council's draft Policy 2021 to 2026, which went to Cabinet on 11th August 2020, prior to consultation and ultimate adoption by full Council on 3rd December of this year.
- 1.3 Members are also requested to note that the Cumulative Impact Policy (CIP) now stands alone from the Policy, following a change in legislation. This will now be required to be reviewed every 3 years and therefore, will run from 2021 to 2024. This report therefore, also introduces the revised draft CIP 2021 to 2024, which is being consulted alongside the draft Policy.

2. Recommendation(s) for decision

- 2.1 There are no Officer recommendations, as adoption of both the final Policy and the CIP are a function of full Council. The Licensing Committee however, are consultees during this process and are therefore invited to propose amendments as deemed appropriate, which will be collated by officers before being ultimately determined by Cabinet prior to full Council adoption.

3. Key points and reasons for recommendations

- 3.1 Section 5 (1) of the Act states that each Licensing Authority (defined as a District Council of England or Wales) must, in respect of each 5 year period, determine its

Policy with respect to the exercise of its licensing functions and publish a statement of that Policy.

- 3.2 A new section of the Act, Section 5A, introduced by section 141 of the Policing and Crime Act 2017 on 6th April 2018, places Cumulative Impact onto a statutory footing and requires that this is separated from the Policy and reviewed every 3 years.
- 3.3 The current Policy, introduced on 7th January 2016, has been reviewed and updated in line with statutory changes as well as changes to guidance and codes of practice. In accordance with Section 5 (3) of the Act, the Policy must be consulted widely with key consultees as follows:
 - a) The chief of police
 - b) The fire and rescue Authority
 - c) Persons considered to be representative of the holders of Premises licences in Torbay
 - d) Persons considered to be representative of the holders of Club Premises Certificates in Torbay
 - e) Persons considered to be representative of the holders of Personal Licences in Torbay
 - f) Such other persons as the licensing authority considers to be representative of businesses and residents in its area
- 3.4 The Council has a statutory responsibility under the Act to complete this process of review of the Policy and to publish the final revision of the Policy along with the CIP on or before 6th January 2021.
- 3.5 The Licensing Committee is a consultee during the adoption process and may propose alterations to the policy or the CIP as they deem appropriate.

For more detailed information on this proposal please refer to Annex 1.

Steve Cox
Environmental Health Manager (Commercial)

Annex 1 – Supporting information to Report

A1. Introduction and history

- A1.1 Section 5 (1) of the Act states that each Licensing Authority (defined as a District council of England or Wales) must, in respect of each 5 year period, determine its Policy with respect to the exercise of its licensing functions and publish a statement of that Policy.
- A1.2 The Policy identifies how the Council will perform its role as Licensing Authority. The last 'Policy' was published to take effect on the 7th January 2016 and therefore expires on 6th January 2021.
- A1.3 A new section of the Act, Section 5A, introduced by section 141 of the Policing and Crime Act 2017 on 6th April 2018, places Cumulative Impact onto a statutory footing and requires that this is separated from the Policy and reviewed every 3 years.
- A1.4 The current Policy has been reviewed and updated in line with statutory changes as well as changes to guidance, codes of practice, good working practices and some of the recommendations from the Evening and Night Time Economy Report, which was produced after a review of the evening and night time economy around Torquay Harbourside, in May 2019, by Night Time Economy Solutions Ltd. The main outcome of that report, favouring a Policy which supports businesses. The draft Policy is attached at **Appendix 1**.
- A1.5 In accordance with Section 5 (3) of the Act, the Policy must be consulted widely with key consultees as identified in 3.3 of the report above.
- A1.6 The Council has a statutory responsibility under the Act to complete this process of review of the Policy and to publish the final revision of the Policy along with the CIP on or before 6th January 2021.
- A1.7 Approval of the finalised Policy following consultation, is a Full Council decision and a report on the draft Policy 2021 – 2026, along with the draft CIP 2021 to 2024 will be presented to Full Council for adoption on 3rd December 2020.

Cumulative Impact Policy (CIP)

- A1.7 The CIP will no longer form part of the Policy. This, since 6th April 2018, is a stand-alone document.
- A1.8 The Council is not required to identify a CIP area, however, it may do so in areas where there is increased crime and/or disorder that is caused by the cumulative effect of a number of licensed premises in the one area. The Council has adopted such a policy for the area around the harbour side in Torquay and through Fleet Street and parts of Union Street. Details of what has been proposed as the new area, compared to the current area, can be found in a map in the draft CIP in **Appendix 2**.
- A1.9 The Act generally carries a rebuttable presumption to grant an application for a new or a variation to a Premises Licence. The effect of a CIP is that any such application received in the area of a CIP, will

instead carry a presumption to refuse, with regard to 'vertical drinking establishments', 'Off licence' and late night refreshment (Takeaways) premises. This places the onus upon the Applicant to illustrate how they would adequately promote the licensing objectives as part of their operation, were the application to be granted. It should be noted this is a change in emphasis from the current CIP, which covers all premises licence applications in this area.

A1.10 The aim of both CIP changes are to be more business supporting, supporting business investment, which may be stemmed with the knowledge of a CIP being in place. It aims to give a balance between supporting business growth, but tackling the issues that arise from a cumulative impact of businesses and the associated crime and disorder and public nuisance issues that arise.

A1.11 Regardless of whether a CIP is in place, any application that did not receive representation(s) would be granted under the due process of law.

A1.12 Introduction or retention of a CIP is open to legal challenge and must therefore, be fully justified based on levels of crime and disorder, numbers of incidents of anti-social behaviour and a number of other factors. For this reason the suggested review of the current CIP is based on statistical information from the Council, Police and other external sources. A summary of this information is included within the draft CIP, **see Appendix 2**.

A1.13 The proposed draft CIP 2021 to 2024 must be fully consulted and will be consulted alongside the draft Policy.

A2. Risk assessment of preferred option

A2.1 Outline of significant key risks

The risks are more associated with any failure to review and re-publish the Policy in the prescribed time. The effect being that the Council has no Policy in place, which could prevent lawful discharge of its functions under the Act, which may lead to legal challenge against the Council and financial penalties being incurred.

The risks associated with agreeing the Policy are minimal, as it has been reviewed in line with regulatory requirements, which include full consultation and consideration of any comments that are received.

A3. Options

A3.1 There is no option other than for the Policy and associated CIP to be reviewed and republished by the 6th January 2021, as failure to do so could leave the Council open to risk of legal challenge.

A3.2 Members are at liberty to propose amendments to the draft Policy 2021 to 2026 or the CIP as appropriate, which will form part consultation response that will be presented to cabinet and then to full Council for adoption.

A4. Summary of resource implications

A4.1 There are no significant additional resource implications that will derive from the

Council discharging its statutory obligations, under the Act.

A5. What impact will there be on equalities, environmental sustainability and crime and disorder?

A5.1 There are no equalities or environmental sustainability implications. These matters were all considered in the Impact Assessment conducted by Central Government prior to enacting the Primary Legislation.

Any local impacts will be picked up and addressed through consultation.

A5.2 Both Policies aimed to address crime and disorder issues associated with the sale and supply of alcohol, and the draft Policy includes a number of changes to support this.

A6. Consultation and Customer Focus

A6.1 A full consultation takes place with the statutory consultees from 11th August 2020 to 13th October 2020.

A6.2 The consultation will also be published on the Council website during the same time period.

A7. Are there any implications for other Business Units?

A7.1 There are no significant implications for other business units relating to this report.

Appendices

Appendix 1 Draft Statement of Licensing Policy 2021 to 2026

Appendix 2 Draft Cumulative Impact Policy 2021 to 2024

Documents available in members' rooms: None

Background Papers:

The following resources and documents were used to compile this report:

- 1 Licensing Act 2003.
- 2 Secretary of State Guidance as issued under Section 182 of the Licensing Act 2003
- 3 The Statement of Licensing Policy 2016 to 2021